



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2012-0088; FRL-9783-5]

**Approval and Promulgation of Air Quality Implementation Plans;
Ohio; Particulate Matter Standards**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to convert a conditional approval of specified provisions of the Ohio state implementation plan (SIP) to a full approval. Ohio submitted a request to approve revised particulate matter (PM) rules on February 23, 2012. The PM rule revisions being approved establish work practices for coating operations, add a section clarifying that sources can be subject to both stationary source and fugitive source PM restrictions, and add a PM emission limitation exemption for jet engine testing. Pursuant to a state commitment underlying a previous conditional approval of this rule, the revised rule provides that any exemption from the work practice requirements that the state grants to large coating sources must be submitted to EPA for approval.

DATES: This direct final rule will be effective [insert date 60 days from date of publication in the Federal Register], unless EPA receives adverse comments by [insert date 30 days from date

of publication in the Federal Register]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-R05-OAR-2012-0088, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: blakely.pamela@epa.gov.
3. Fax: (312) 692-2450.
4. Mail: Pamela Blakely, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Pamela Blakely, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 AM to 4:30 PM, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2012-0088. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886-6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, rau.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?

II. What is EPA's analysis of the revision?

III. What action is EPA taking?

IV. Statutory and Executive Order reviews.

I. What is the background for this action?

Ohio sought SIP approval of its revision of Ohio Administrative Code (OAC) Chapter 3745-17 to clarify and amend its PM rules in an August 22, 2008, submission. EPA approved nine sections, partially approved another section, and approved the rescission of another section of the OAC 3745-17 PM rules in an October 26, 2010, direct final rule (75 FR 65567). EPA conditionally approved OAC 3745-17-11 in the October 26, 2010, rule, conditioned on Ohio making specified revisions to the rule. The rule that EPA conditionally approved established work practice requirements for coating sources in lieu of PM emission limits. As written when submitted on August 22, 2008, OAC 3745-17-11 would have authorized Ohio to exempt coating sources that are too large to meet the work practice requirements of the rule from complying with those requirements. No EPA approval of the exemption was required, thus the state could have unilaterally exempted coating sources from the work practice requirements. EPA conditionally approved OAC 3745-17-11 based on a commitment by Ohio to revise the rule to require that any exemption of

large coating sources from the work practice requirements be submitted to EPA as a request for revision to the SIP.

Pursuant to its commitment, Ohio revised OAC 3475-17-11, Restrictions on Particulate Emissions from Industrial Sources, on December 13, 2011. The revised rule was effective on December 23, 2011. Ohio revised OAC 3745-17-11 (A)(1)(l) to provide that any exemption from the surface coating PM work practice requirements for sources coating large size items, which the state may grant when emission control would be technically infeasible, economically unreasonable, or both, must be submitted to EPA for SIP approval. The added language makes clear that state action to grant such an exemption does not exempt the source from Federal enforcement of the work practice requirements in the SIP unless and until EPA approves the exemption.

The version of OAC 3745-17-11 that EPA conditionally approved included other revisions from the PM rules EPA approved into the Ohio SIP on November 8, 2006 (71 FR 65417). Section (A)(5) states that sources can be subject to both fugitive dust and stationary source PM restrictions if that facility emits PM through its stacks as well as emits fugitive dust. Section (A)(1)(m) exempts jet engine test stands from the PM emission limits.

II. What is EPA's analysis of the revision?

EPA finds the revisions to OAC 3745-17-11 submitted on February 23, 2012, to be approvable.

Although the primary emissions of concern from surface coating are the volatile organic compound emissions that arise from solvent evaporation, OAC 3745-17-11 establishes a particulate emission limit for coating operations simply because OAC 3745-17-11 establishes generic emission limits for any process handling material such as coatings and objects being coated. However, testing of particulate emissions from coating operations is difficult, making it difficult to determine whether particular control measures provide for compliance. Therefore, Ohio exempted surface coating operations from the generic emission limits in OAC 3745-17-11 and subjected these sources instead to a set of rules requiring a specific set of work practices that will limit the emissions as well as an emission limit. The exemptions for surface coaters are provided in OAC 3745-17-11 (A)(1)(h) to (l).

As noted in Section I., Ohio revised OAC 3745-17-11 (A)(1)(l) to require EPA approval, as a SIP revision, for all large item exemptions. This satisfies EPA's concerns with director's discretion previously expressed to Ohio regarding the August 22, 2008, submission. Therefore, EPA is now approving

OAC 3745-17-11 (A)(1)(l), as submitted on February 23, 2012, into the Ohio SIP.

OAC 3745-17-11 (A)(1)(m) grants an exemption from the rule's PM emission limits for jet engine testing. PM emissions resulting from this exemption are expected to be small given that a small number of engines will be tested at once and only for a limited time. Ohio stated that the maximum PM emissions rate resulting from this exemption will be 10 pounds per hour. EPA finds that this exemption will have de minimis impact and thus finds OAC 3745-17-11 (A)(1)(m) approvable.

Another addition to OAC 3745-17-11 is section (A)(5), which states that source can be subject to both OAC 3745-17-08 and OAC 3745-17-11. This section applies to a source that is a fugitive dust source, as defined by OAC 3745-17-01 (B)(7), and emits PM through one or more stacks. Restrictions on emissions of fugitive dust are given in OAC 3745-17-08. It is logical that a source emitting PM as fugitive dust and also through stack emissions would be subject to the PM emission restrictions for both fugitive sources and for stationary sources. Thus, EPA is approving this addition to the Ohio SIP.

A final important element of Ohio's submittal is OAC 3745-17-11 (C), the requirements for surface coating processes that are exempt under OAC 3745-17-11 (A)(1)(h) to (l). Surface

coating processes are required by OAC 3745-17-11 (C)(1) to use a dry particulate filter, waterwash, or equivalent control device to limit PM emission. Subject facilities must follow the work practice requirements given in OAC 3745-17-11 (C)(2) including maintaining documentation, properly operating the control device, and conducting periodic inspections of the control device. This section also requires a surface coating source to comply with any PM emission limits given in a facility's permit instead of the previous listed requirement of OAC 3745-17-11 (C)(1) and (2). EPA finds these requirements to be a suitable equivalent to subjecting these sources to the generic emission limit in Ohio's process weight rate rule.

III. What action is EPA taking?

EPA is converting its prior conditional approval to full approval because Ohio submitted revisions to OAC 3745-17-11 that satisfy the conditions listed in EPA's conditional approval. EPA is approving all of OAC 3745-17-11, as effective on December 23, 2011, into the Ohio SIP.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve

the state plan if relevant adverse written comments are filed. This rule will be effective [insert date 60 days from the date of publication in the Federal Register] without further notice unless we receive relevant adverse written comments by [insert date 30 days from the date of publication in the Federal Register]. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective [insert date 60 days from the date of publication in the Federal Register].

IV. Statutory and Executive Order reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C.

7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act

of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the

proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Particulate matter, Reporting and recordkeeping requirements.

Dated: February 11, 2013

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.1870 is amended by adding paragraph (c)(157) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(157) On February 23, 2012, Ohio submitted revisions to Ohio Administrative Code Chapter 3745-17, Rule 3745-17-11. The revisions contain particulate matter restriction for industrial sources in the State of Ohio necessary to attain and maintain the 2006 24-hour PM_{2.5}, annual PM_{2.5}, and 24-hour PM₁₀ NAAQS.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745-17-11 "Restrictions on particulate emissions from industrial processes", effective December 23, 2011.

(B) December 13, 2011, "Director's Final Findings and Orders", signed by Scott J. Nally, Director, Ohio Environmental Protection Agency.

§ 52.1919 [Amended]

3. Section 52.1919 is amended by removing paragraph (c).

[FR Doc. 2013-07259 Filed 03/28/2013 at 8:45 am; Publication
Date: 03/29/2013]